act be to limit the minimum membership of companies to seven persons substantially interested, it is as difficult to support a company of two or five or six as of one. Yet courts have distinguished cases whose logical results were disagreeable on less grounds than this.

Broderip v. *Salomon* was, to be sure, a hard case, but after all did it justify such radical statements about one-man companies in general? Suppose A wishes to engage in trade with a limited liability. He takes his trade assets, sells them to the company he has formed, registers the stock he receives as paid in property under the English act for that purpose, and starts in trade. What difference is it to the company's creditors that the stock is owned by one man? They have the assets, the stock is paid in full, as the act requires, as well as if twenty had contributed. How does it differ from a company launched with many shareholders, all of whose stock is bought up subsequently by one man? That must be bad too, but it cannot defraud creditors, and would seem to be within a reasonable construction of the act. Or if not, the company may be dissolved, but why create a new liability? The final outcome of *Nunkittrick* v. *Perryman* will be interesting.

CONTRACTS — ACCEPTANCE OF PART PERFORMANCE. — The recent case of *Silberman* v. *Fretz*, reported in 14 New York Law Journal, 1697, though in reality decided upon simple and undisputed grounds, is interesting in its relation to the vexed subject of "divisible" contracts. Under a contract to deliver several parcels of cloth, at different times, the seller delivered only the first parcel, which the buyer accepted. Prior to the delivery of this parcel the seller informed the buyer that he would not be able to deliver the remaining lots at the agreed times; and the buyer therefore knew that this delivery was complete in itself, and accepted it as such. The court rightly held that under these circumstances the buyer became immediately liable for the agreed price of this parcel, no time of payment having been fixed. There was such a distinct waiver of full performance as a condition precedent to payment for this lot as to make it fairly evident, without any necessity of plunging into the obscure question about the "severability," "divisibility," or "apportionment" of contracts, that the defendant has in effect consented to pay at the agreed price for this parcel, whether he gets the rest or not. The case does not, however, help towards the decision of the vexed question as to whether the defendant would have been liable if he had accepted the goods, but not under such circumstances as to show a waiver of further performance. If he had accepted the first lot of cloth, and immediately worked it up, so that returning the goods was out of the question, but expected at the time of acceptance to receive the remainder in due time, it would not seem right that he should have to pay for it at the contract price. He would have to do so in England (*Oxendale* v. *Wetherill*, 9 B. & C. 441); in Massachusetts (*Bowker* v. *Hoyt*, 18 Pick. 555), and in some other States; but the New York courts long ago decided to the contrary in *Champlain* v. *Rowley*, 18 Wend. 632; and the question is still in dispute. The contract in such cases is evidently intended to be entire, and the courts all recognize it as being originally such; but after an acceptance of part performance the question arises whether that part of the contract should not be regarded as completed in itself, and as divided off from the rest of the contract by the acts of the parties. This view, which ex-

plains very many cases, is certainly sound, when the acceptance amounts in fact to a waiver of full performance; but where the buyer at the time of the acceptance of part expects the performance of the whole, there is in fact no such waiver. In order to make him liable, it must be held that the first part of the contract has become, in the eye of the law, divided off from the rest, without the clear consent of the party affected. In considering the desirability of this result, it must be remembered that at all events the buyer can probably be made to pay the bare value of the goods he has had, on a *quantum meruit*; though even this remedy has been denied in New York (see *Mead* v. *Degolyea*, 16 Wend. 632).

A LAWYER'S DUTY AS AN OFFICER OF COURT. — A question of interest to the profession has come up recently in the English courts in regard to the duties of a solicitor as an officer of the court. In the *Chancery Forgery Case* (*Marsh* v. *Joseph*), 12 *The Times* L. R. 255, a forger, without authority, used the name of A, a solicitor, in a bogus proceeding, whereby he secured a fund out of court. On the swindler's informing him of this and offering him a share of the costs allowed, A accepted the money and thereby, the court held, connected himself at once with the proceeding as solicitor, and must make good so much of the fund as he could have saved had he promptly investigated the whole proceedings. This is a remarkable decision in that the court found there was nothing to lead A to suspect more than the unauthorized use of his name. The principle of the decision is, that a solicitor acting in non-contentious proceedings is under a duty to bring before the court all matters essential for it to know in order to deal properly with the matter. This proposition is derived from Mr. Justice Stirling's opinion in *In re Dangar's Trusts*, L. R. 41 Ch. D. 178.

It is to be noticed that this case does not go so far as to hold an attorney liable because he knows of some irregularity, but he must have connected himself with the proceedings in his official capacity. He then becomes liable for so much loss as he could have prevented after that. This is important because, from the note on the case in 31 Law Journal, 195, it would seem that it has been supposed to stand for the broader proposition. If the case did stand for such a proposition, there would indeed be cause for surprise. Members of the bar are no less averse to becoming informers than any other class of men. It would be impossible to hold a lawyer as guarantor of the regularity of all the steps in a proceeding because some irregularity has come to his knowledge, perhaps so trivial that interference on his part would be characterized as officious.

At a subsequent hearing of the case under discussion (12 *The Times* L. R. 266), the solicitor's partner was held to the same liability as the solicitor himself. However, if this decision causes surprise, the court has erred, if at all, on the right side. The relation in which the profession stands to the public requires that there should be no disposition to treat leniently the shortcomings of its members. To allow consequential damages in such cases is no doubt a hardship, but courts cannot permit loss to result from a defect in the machinery of justice.

The case has been appealed, and the opinion of the upper court will be awaited with interest.